

EXHIBIT "A"
STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

FILED
APR APR 5 1974

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
FILED BY MITCHEL BENGOCHEA,
APPLICATION NO. 278-s40-0

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered May 24, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby Ordered.

ORDER

1. The applicant's permit is granted allowing the appropriation of 180 acre-feet per annum of water from the East Fork of Porcupine Creek to be diverted at a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 30 North, Range 41 East, of Valley County, Montana, by means of a pump.

2. The applicant's permit is granted allowing the appropriation of surface waters exclusively (only those waters above the natural bed of the stream).

3. The permit is granted on the condition that the pump will not be designed or utilized for the withdrawal of ground water.

4. The permit is granted subject to existing rights and the prior paramount reserved rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in the source of water from which the appropriation is made.

Done this 31st day of October, 1974

Orvin Perrie
Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

CASE # 216

Done this 4th day of August, 1977.

Orin Herrin

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 278

BEFORE THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE APPLI-
CATION OF MITCHEL BENGOCHEA
278-s40-0

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pursuant to the provisions of the Montana Water Use Act, section 89-865 et seq., R.C.M. 1947, after due notice, a public hearing was held May 6, 1974, at the Valley County Courthouse, Glasgow, Montana. Two of the objectors appeared to offer testimony and in addition the applicant offered brief testimony.

PROPOSED FINDINGS OF FACT

1. On September 6, 1973, Mitchel Bengochea duly filed with the Department of Natural Resources and Conservation, Water Resources Division, an application for beneficial water use permit to appropriate water from May 15 to September 15, 180 acre feet of water per annum for irrigation purposes from the East Fork of Porcupine Creek, a tributary of Porcupine Creek, at a point in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 16, T30N, R41E, Valley County, Montana, the water to be used in the S $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 16, T30N, R41E, M.P.M.
2. Objections to the application were filed by Irene Bouchard and Don Grimsrud of Nashua, Montana, and Marvin J. Sonosky of Washington, D.C., on behalf of the Assiniboine and Sioux Tribes, and the United States of America, Interior Department, Solicitor's Office.
3. The applicant's diverting works consist of a six (6) inch pump and pipeline, the water to be pumped directly from the stream.
4. The land to which the applicant intends to apply water is within the exterior boundaries of the Fort Peck Reservation.
5. If the applicant appropriates only those waters above the natural bed of the stream no prior right holders will be adversely affected.

From the foregoing proposed findings of fact the following proposed conclusions of law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from the East Fork of Porcupine Creek for beneficial use is required.

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2. The applicant's intended use as described in the application is a beneficial use for which water may be appropriated.
3. The application for beneficial water use permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

Based on the above proposed findings of fact and conclusions of law, the following order is proposed:

PROPOSED ORDER

1. The applicant's permit is granted allowing the appropriation of 180 A.F. per annum of water from the East Fork of Porcupine Creek to be diverted at a point in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 16, T30N, R41E, of Valley County, Montana, by means of a pump.
2. The applicant's permit is granted allowing the appropriation of surface waters exclusively (only those waters above the natural bed of the stream).
3. The permit is granted on the condition that the pump will not be designed or utilized for the withdrawal of groundwater.
4. The permit is granted subject to existing rights.

NOTICE: This is a proposed order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the proposed order shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

May 24, 1974
Date

Donald D. MacIntyre
Donald D. MacIntyre
Hearing Examiner